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NAKAMURA, BRIAN OSBERG, DAVID RHAMY and SHARON UPDIKE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
CONSERVATOR FOR WESTERN
CORPORATE FEDERAL CREDIT
UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, et al.,

Defendants.

No. CV 10-01597 GW (MANx)

**NOTICE OF MOTION AND MOTION
TO SUBSTITUTE PLAINTIFF
PURSUANT TO FED. R. CIV. P. 25(c)**

Honorable George H. Wu

Courtroom 10

312 North Spring Street

Date: June 9, 2011

Time: 8:30 a.m.

Courtroom: Los Angeles, 10

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on Thursday, June 9, 2011, at
3 8:30 a.m. (a time set by stipulated order, Doc. 118), before the Honorable
4 George H. Wu, United States District Judge for the Central District of
5 California, in Courtroom 10, located at 312 North Spring Street, Los Angeles,
6 California, Defendants **ROBERT JOHN BURRELL, WILLIAM**
7 **CHENEY, GORDON DAMES, ROBERT H. HARVEY, JR., JAMES**
8 **JORDAN, TIMOTHY M. KRAMER, ROBIN LENTZ, JOHN M.**
9 **MERLO, WARREN NAKAMURA, BRIAN OSBERG, DAVID RHAMY**
10 and **SHARON UPDIKE** (“Defendants”) will and hereby do move the Court
11 for an order substituting as plaintiff the entity that filed the Second Amended
12 Complaint filed Feb. 22, 2011, Doc. 116 (the “SAC”) – the National Credit
13 Union Administration Board (“NCUA”) as liquidating agent of Western
14 Corporate Federal Credit Union (“WesCorp”) – in place and instead of the
15 entity that filed the First Amended Complaint filed Aug. 31, 2010, Doc. 84
16 (the “FAC”) – the NCUA as conservator of WesCorp – but only on condition
17 that the substitution does not affect in any way whatever rights defendants
18 may have to assert claims or counterclaims or cross-claims (pursuant to Fed.
19 R. Civ. P. 13 and 14, or otherwise) against WesCorp or against the NCUA as
20 conservator. These conditions are necessary to ensure that the NCUA is not
21 able to avoid such claims merely because of its procedurally improper attempt
22 to usurp the authority of the Court.

23 This motion is made and based on Rule 25(c) of the Federal Rules of
24 Civil Procedure on the grounds that there has been a transfer of interest in the
25 litigation, *compare* SAC ¶ 1 *with* FAC ¶ 1, but no court order substituting
26 NCUA as liquidating agent for NCUA as conservator.

27 This motion is based upon this notice of motion and motion, the
28 memorandum filed herewith, any further papers as may be filed in connection

1 with this motion, and all the pleadings and record filed in this action.

2 This motion is made following the conference of counsel pursuant to
3 Local Rule 7-3, which took place on April 13, 2011.

4 This motion also is made following extensive negotiations over a
5 stipulation embodying the conditions described above, which negotiations
6 proved unsuccessful, largely because the NCUA was unwilling to place those
7 conditions into a written stipulation.

8 Dated: April 18, 2011.

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19 By /s/ Bruce A. Ericson
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David Rhamy and Sharon Updike
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